assignee of a chose in action takes free and clear of the equities of third parties.[8] These cases have been explained on the ground that the assignee gets not only an equitable right to sue in his assignor's name, but also a legal right to collect, of which equity should not deprive him.[9] But the decisions do not turn on that theory, and it is submitted that when the interest assigned is purely equitable, as in the principal case, the same result should be reached.

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WHETHER NEGLIGENT ACT OR DAMAGE CAUSED THEREBY CONSTITUTES CAUSE OF ACTION. — The larger body of authority goes to show that in an action for negligence the cause of action is the damage to the plaintiff caused by the defendant's negligence. Thus the Statute of Limitations runs only from the time when the damage occurred, not from the time of the negligent act.[1] A single act, by causing distinct damages to the plaintiff at different times, may give rise successively to more than one right of action.[2] And a leading case holds that a recovery for damage to property is not a bar to an action for personal injury caused simultaneously by the same negligent act.[3] On like reasoning the union of claims for damages to person and property, though caused by a single act, has been held a misjoinder of causes of action.[4]

On the other hand, two recent cases, examples of a considerable body of authority in this country, have been decided on the theory that the cause of action is not the violation of the plaintiff's right, but the defendant's "tortious act" or "wrong"; that there is, therefore, but one cause of action for the damage to both person and property. In one it was held that a judgment for the damage to property barred an action for the personal injury. *Ochs* v. *Public Service Ry. Co.*, 77 Atl. 533 (N. J., Sup. Ct.).[5] In the other the court overruled a motion to state separately the causes of action, both claims having been included in one count.

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[8] Kent, Ch., originated this theory by his *dicta* in Murray *v.* Lylburn, 2 Johns. Ch. (N. Y.) 441. Though repudiated in New York in Bush *v.* Lathrop, 22 N. Y. 535, his theory has generally prevailed in this country. Porter *v.* King, 1 Fed. 755. For a full collection of the authorities see 68 ALB. L. J. 290.

[9] See 1 HARV. L. REV. 1, 7, and 8.

[1] Roberts *v.* Read, 16 East 215. See Dyster *v.* Battye, 3 B. & Ald. 448. But the statute runs from the time when there is any damage which will support an action. Howell *v.* Young, 5 B. & C. 259; Moore *v.* Juvenal, 92 Pa. St. 484. *Cf.* Wood *v.* Carpenter, 101 U. S. 135.

[2] Backhouse *v.* Bonomi, 9 H. L. Cas. 503; Illinois Central R. Co. *v.* Wilbourn, 74 Miss. 284. *Cf.* Lee *v.* Kendall, 56 Hun (N. Y.) 610.

[3] Brunsden *v.* Humphrey, 14 Q. B. D. 141. *Accord*, Newbury *v.* Conn. & Pass. Rivers R. Co., 25 Vt. 377; Watson *v.* Texas & P. Ry. Co., 8 Tex. Civ. App. 144; Reilly *v.* Sicilian Asphalt Paving Co., 170 N. Y. 40. So also where one action is for injuries to the plaintiff, the other, his action for injuries to his wife. Skoglund *v.* Minneapolis Street Ry. Co., 45 Minn. 330; Texas & P. Ry. Co. *v.* Nelson, 9 Tex. Civ. App. 156. Or where one is case for damage to personalty, the other, case for damage to realty. Southside R. R. Co. *v.* Daniel, 20 Grat. (Va.) 344. Hagan *v.* Casey, 30 Wis. 553, goes too far in allowing two actions of trespass *quare clausum* where a single entry causes damage to realty and to personalty.

[4] Boerum *v.* Taylor, 19 Conn. 122; Townsend *v.* Coon, 7 N. Y. Civ. Proc. Rep. 56; Lamb *v.* Harbaugh, 105 Cal. 680.

[5] *Accord*, King *v.* Chicago, M. & St. P. Ry. Co., 80 Minn. 83.

*Bilikan* v. *Columbus Railway & Light Co.*, 20 Oh. Dec. 609 (Ohio, Franklin Common Pleas).[6]

On principle this latter theory is clearly wrong. The defendant "is answerable for the consequences of negligence, not the abstract existence of it." [7] So far from the defendant's negligent act being the cause of action, it is "tortious" and a "wrong" only when it injures the plaintiff's right by causing him damage. If one's property is damaged by a negligent act and he becomes bankrupt and later suffers personal injuries from the same act, is he to be told that the sole cause of action for the negligence has passed to his trustee? Or if no damage results till more than six years after the so-called "cause of action" occurred, is the suit outlawed by the Statute of Limitations? [8] Indeed, it is hard to see why this doctrine would not require several victims of a negligent act to sue jointly for all the damage done.

The practical result in each of the principal cases is not very objectionable. The Ohio case at most allows recovery for two causes of action on a complaint of one count.[9] While the New Jersey case decides matter of substance, its tendency is perhaps to prevent unnecessary vexation of the defendant where both causes of action may conveniently be sued on together.[10] But if this reason does not apply, as where recovery is sought in different capacities, and the question is therefore purely whether one negligent act can give rise to more than one cause of action, judgment in one action is rightly held not to bar the other.[11] Among the circumstances [12] under which holding the defendant's act to be the cause of action would produce substantial difficulties are those resulting from the doctrine of bankruptcy that rights of action for injury to prop-

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[6] *Accord*, Baltimore & Ohio R. Co. *v.* Ritchie, 31 Md. 191; Braithwaite *v.* Hall, 168 Mass. 38. *Cf.* Doran *v.* Cohen, 147 Mass. 342. In the other cases adopting this theory the real ground for decision was that the objection of duplicity was not taken, but only that of misjoinder: Birmingham Southern Ry. Co. *v.* Lintner, 141 Ala. 420; or that pleading over cured the defect of duplicity: Seger *v.* Barkhamsted, 22 Conn. 290; Lamb *v.* St. Louis, etc. Ry. Co., 33 Mo. App. 489. It is doubtless correct that injury to the person and clothing on the person gives but one right of action. See Bliss *v.* New York, etc. R. R., 160 Mass. 447, 455.

[7] Per Gibson, C. J., in Hart *v.* Allen, 2 Watts (Pa.) 114, 116.

[8] The affirmative answer was made a *ratio decidendi* in Schade *v.* Gehner, 133 Mo. 252, 259. The actual decision was correct, however, as the statutory period had run since the occurrence of damage.

[9] This has been allowed by courts recognizing that there are two causes of action. Shoemaker *v.* Atkin, 11 Heisk. (Tenn.) 294. See Chicago, etc. Ry. Co. *v.* Ingraham, 131 Ill. 659.

[10] See 15 HARV. L. REV. 752.

[11] *E. g.*, an action by an administrator for the benefit of the estate and one for the benefit of the next of kin, the negligence complained of being the same in each. Barnett *v.* Lucas, Ir. R. 6 C. L. 247; Leggott *v.* Great Northern Ry. Co., 1 Q. B. D. 599; St. Louis, etc. Ry. Co. *v.* Sweet, 63 Ark. 563. So where negligence causes damage to partnership property and personal injury to one partner. Taylor *v.* Manhattan Ry. Co., 53 Hun (N. Y.) 305. *Cf.* Taylor *v.* Metropolitan, etc. Ry. Co., 52 N. Y. Super. Ct. 299. Attempts have been made to explain these cases on the ground that one cause of action can be split where two suits are necessary to protect the rights injured. Peake *v.* Baltimore & Ohio R. Co., 26 Fed. 495. See Cincinnati, etc. R. R. Co. *v.* Chester, 57 Ind. 297.

[12] Other difficulties may arise because of different periods of limitation for the two classes of actions and the different rules as to assignability and equitable execution. See also note 8, *supra*.

erty pass to the trustee, while those for personal injury do not.[13] Failure to recognize that the kinds of damage form the test of the number of causes of action is frustrating this rule by allowing the bankrupt to sue for damage to property as well as the person, if caused by the same act.[14]

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ESTOPPEL PREDICATED UPON INNOCENT MISREPRESENTATION. — Assuming the existence of the other elements [1] necessary to an estoppel by misrepresentation, the question whether the estoppel can arise when there has been only an innocent misrepresentation is one upon which the authorities are not unanimous. The statement that fraud is an essential ingredient of the misrepresentation is frequently made.[2] A determination as to the accuracy of the requirement is to be reached by recognizing and applying the fundamental principle upon which the whole doctrine of estoppel by conduct rests. That principle is simply this: that a man will be precluded from denying the truth of misrepresentations when to allow him to deny would be contrary to equity and good conscience.[3] The doctrine, then, being broadly founded upon fairness, the inquiry now becomes whether the denial of an honest misrepresentation may ever be so unconscionable as to be prohibited. The fact that the subject is equitable in its nature makes this peculiarly a matter to be determined by all the circumstances of a particular case. There are, however, three general situations which in a broad way illustrate the question.

Suppose, first, that A innocently but mistakenly points out as the boundary between his lot and B's a line inside his own land, up to which B in reasonable reliance builds. On discovering his error A is estopped as against B to claim to the true line.[4] "When one of two innocent persons must suffer, he shall suffer who by his own acts occasioned the confidence and loss." [5] To permit A now to repudiate his prior assertion would be to permit him to inflict upon B a palpable injustice and would be tantamount to sanctioning a fraud.[6] Secondly, the question may arise when A, with no fraudulent intent, has so made it possible for X to make a successful misrepresentation that A's action may fairly be considered an efficient cause of the ensuing change of B's position. And here the result will be identical: thus when A, on sending his cattle to be pastured with X's herd, puts X's brand on them, he is estopped later to

[13] See 24 HARV. L. REV. 396.

[14] Brewer *v.* Dew, 11 M. & W. 625; Rose *v.* Buckett, [1901] 2 K. B. 449. But see Darley Main Colliery Co. *v.* Mitchell, 11 App. Cas. 127, 144; 15 HARV. L. REV. 229.

[1] See EWART, ESTOPPEL, 10; BIGELOW, ESTOPPEL, 5 ed., 570.

[2] Brant *v.* Virginia Coal & Iron Co., 93 U. S. 326, 335. See Crary *v.* Dye, 208 U. S. 515, 521; BIGELOW, ESTOPPEL, 5 ed., 617.

[3] Horn *v.* Cole, 51 N. H 287, 289.

[4] Ross *v.* Ferree, 95 Ia. 604; Cornish *v.* Abington, 4 H. & N. 549, 556. See Jorden *v.* Money, 5 H. L. Cas. 185, 212; EWART, ESTOPPEL, 94.

[5] Stevens *v.* Dennett, 51 N. H. 324, 336. This statement is said to be "bed rock of universal principle, upon which all instances of equitable estoppel must be founded." See 2 POMEROY, EQ. JUR., 3 ed., § 805, n. 1.

[6] By the loose statement that "fraud is essential to estoppel" is frequently meant no more than this: that to allow A to assert against B his right or title would now be equivalent to fraud. See Rice *v.* Bunce, 49 Mo. 231, 235.